

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of )

Implementation of the Pay Telephone )

Reclassification and Compensation Provisions )

Of the Telecommunications Act of 1996 )

Petition of the Independent Payphone Association )

of New York, Inc. to Pre-empt Determinations of )

the State of New York Refusing to Implement the )

Commission's Payphone Orders, and For a )

Declaratory Ruling )

CC Docket No. 96-128

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Federal Communications Commission  
Office of Secretary**MOTION OF THE INDEPENDENT PAYPHONE ASSOCIATION  
OF NEW YORK, INC. TO CONSOLIDATE ITS PETITION  
FOR AN ORDER OF PRE-EMPTION AND A DECLARATORY  
RULING WITH (1) THE PETITION FOR A DECLARATORY RULING  
OF THE ILLINOIS PUBLIC COMMUNICATIONS ASSOCIATION  
AND (2) THE SOUTHERN PUBLIC COMMUNICATION ASSOCIATION  
PETITION FOR A DECLARATORY RULING**

The Independent Payphone Association of New York, Inc. (IPANY), pursuant to Rule 1.227 of the Commission's rules of procedure (47 CFR §1.227), hereby moves for consolidation of the Petition being filed by IPANY on even date herewith, which seeks an Order of Pre-emption and a Declaratory Ruling, with the pending Petitions of the Illinois Public Communications Association and the Southern Public Communication Association for similar relief. In support thereof, it is respectfully shown as follows:

1. IPANY is a New York not-for-profit trade association representing over 80 independent payphone providers in the State of New York. IPANY is today filing

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with this Commission a Petition for an Order of Pre-emption and Declaratory Ruling urging the Commission to set aside determinations of the State of New York which are inconsistent with, and undermine, the regulatory regime established by this Commission in its Payphone Orders and the two Wisconsin Orders. Specifically, IPANY's Petition asks this Commission to set aside New York determinations which (a) refuse to apply the holdings of the Commission's Wisconsin Orders; (b) refuse to require Verizon New York to establish forward-looking, direct cost rates for underlying payphone services in accordance with the New Services Test; and (c) refuse to comply with this Commission's requirement that Verizon New York be liable for refunds because its payphone rates have continuously exceeded NST-compliant rates since April 15, 1997.

2. On July 30, 2004, the Illinois Public Communications Association (IPCA) filed a Petition for a Declaratory Ruling with this Commission requesting a determination:

- a. That the PSP members of the IPTA are entitled to refunds or reparations from ILECs from April 15, 1997 to the extent that the rates and charges imposed by Illinois Bell were in excess of cost-based rates required by the Commission's New Services Test;
- b. That the decision of the Illinois Commerce Commission denying the IPTA members refunds or reparations is inconsistent with the Commission's Payphone Orders;
- c. Whether the ILECs were eligible to receive dial-around compensation prior to the filing of new tariffs to comply with the New Services Test.

3. This Commission issued a Public Notice (DA 04-2487) on August 6, 2004, requesting comments on the IPTA Petition.

4. On November 9, 2004, the Southern Public Communication Association (SPCA) filed a separate Petition for a Declaratory Ruling as to the consequences and remedies available in the State of Mississippi for an ILEC's violation of the Commission's Payphone Orders and the Wisconsin Order. Specifically requested in that Petition was a declaration specifying:

- (1) That the Mississippi Public Service Commission (MPSC) had an obligation to follow and apply the New Services Test mandated by Section 276 of the Telecom Act and the Commission's Payphone Orders and Wisconsin Order;
- (2) That the SPCA had a right to pursue a cause of action for refunds;
- (3) That the Payphone Service Provider (PSP) members of the SPCA are entitled to refunds or reparations from BellSouth for the period April 15, 1997 through October 1, 2003, to the extent that BellSouth's rates and charges were in excess of cost-based rates which complied with the New Services Test, including a refund of the applicable federally tariffed subscriber line charge (SLC) included in the BellSouth monthly line charge;
- (4) That the MPSC should re-evaluate its dismissal of the SPCA's complaint and its denial of refunds or reparations to ensure compliance

with the Commission's rulings; and

- (5) Whether BellSouth was and remained eligible to receive dial-around compensation prior to October 1, 2003

5. In connection with its Petition, the SPCA filed a separate motion to consolidate its Petition with the Petition previously filed by the IPTA.

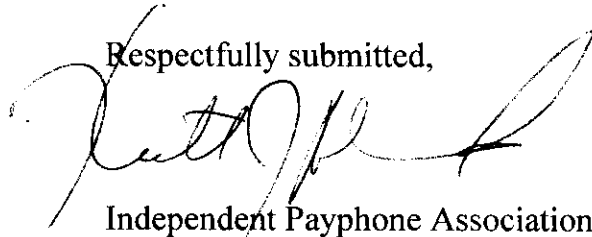
6. This Commission issued a Public Notice (DA 04-3653) on November 19, 2004, seeking comments on the SPCA Petition. In that Public Notice, the Commission indicated that the SPCA Petition “appears to raise the same or substantially similar issues raised in the IPTA Petition”. Accordingly, the Commission determined it would consider SPCA's Petition at the same time it considered the IPTA Petition in CC Docket 96-128.

7. The relief requested in the instant Petition filed by IPANY involves substantially the same issues as the issues presented in the IPTA and SPCA Petitions. All three Petitions seek a Declaratory Ruling involving this Commission's interpretation of the rights and remedies of Payphone Service Providers (referred to as IPPs in the IPANY Petition) under Section 276 of the Telecom Act, and the Payphone Orders and Wisconsin Orders issued by this Commission in implementing Section 276. A consolidation of all three Petitions would be conducive to the proper dispatch of the Commission's business and in the public interest.

WHEREFORE, IPANY moves this Commission to consolidate its Petition

for an Order of Pre-emption and a Declaratory Ruling, being filed today, with the IPTA  
Petition dated July 30, 2004 and the SPCA Petition dated November 9, 2004.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Keith J. Roland", is written over the typed name and affiliation.

Independent Payphone Association  
of New York, Inc.

By: Keith J. Roland  
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Dated: Albany, New York  
December 29, 2004

**CERTIFICATE OF SERVICE**

I, Tonia Margiotta, do hereby certify that I have this day caused to be mailed by U.S. Mail, postage prepaid a true and correct copy of the Motion of IPANY for an Order of Consolidation addressed to the following:

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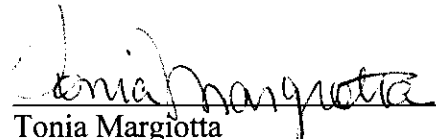
I also certify that on this date I have sent a true and correct copy of said motion

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